SUPREME COURT, U. S.
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MICHAEL RODAK, JR.

No. 73-1244

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, PETITIONER

v.

JESSIE SHORT, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Claims in this case.

OPINION BELOW

The opinion and judgment of the Court of Claims (App. A)[1] is reported at 486 F. 2d 561.

JURISDICTION

The judgment of the Court of Claims was entered on October 17, 1973. On January 10, 1974, Mr. Chief Justice Burger extended the time within which the

[1] "App." refers to the separately bound appendix filed with the petition for a writ of certiorari (No. 73-1104) filed by the Hoopa Valley Tribe, intervenor below.

United States may petition for a writ of certiorari to and including February 14, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether, in light of the discretion given the President by Congress to settle Indians on reservations in California, and in light of specific actions by Congress treating separately different parts of the Hoopa Valley Reservation, the Court of Claims erred in setting aside the determination by the Secretary of the Interior that the Hoopa Valley Tribe has tribal jurisdiction over the portion of the Reservation that is its ancestral home and historic reservation and which continues to be the place where most of the enrolled members of the tribe reside.

2. Whether the Secretary of the Interior acted properly in paying the proceeds of annual sales of timber on the original Hoopa Valley Tribe portion of the Hoopa Valley Reservation to members of the Hoopa Valley Tribe, to the exclusion of the respondents, members of the Yurok Tribe.

STATUTES AND EXECUTIVE ORDERS INVOLVED

The statutes and executive orders primarily involved are Act of April 8, 1864, 13 Stat. 39 (App. B); Act of June 17, 1892, 27 Stat. 52 (App. C); Executive Order of June 23, 1876, 1 Kappler 815 (App. D); Executive Order of October 16, 1891, 1 Kappler 815 (App. E).

STATEMENT

1. This is a suit by 3,323 individual Yurok Indians against the United States, claiming that the United States improperly paid to the members of Hoopa Valley Tribe, to the exclusion of the respondents, money gained from the sale of timber on the original Hoopa Valley Tribe portion of the Hoopa Valley Reservation. At stake are an estimated 16 million dollars in past payments and the future control of the tribally owned land in the Reservation.

This case grows out of the same history considered by the Court in *Mattz* v. *Arnett*, 412 U.S. 481, and reference to that decision and the map reprinted by the Court following 412 U.S. 506 will be helpful in considering this petition.

By order of November 16, 1855, President Pierce, under congressional authorization, established the Klamath River Reservation for the Yurok Indians. See *Mattz, supra,* 412 U.S. at 487. See, also, App. A 14–16. The reservation encompassed the land marked as "Old Klamath River Reservation" on the Court's map (412 U.S. at 506). The area was historically occupied by the Yuroks.

The original Hoopa Valley Reservation, the Square, as shown on the Court's map, was established in 1864. The boundaries were confirmed by Executive Order on June 23, 1876. *Mattz, supra*, 412 U.S. at 490, n. 9; App. A 25–27. At that time the population of the Square was overwhelmingly Hoopa (App. A 29). The area was the historic home of the Hoopas. Subsequently

all Indians living on the Square have been considered Hoopa for purposes of census (App. A 31–32) and, increasingly for purposes of tribal government (App. A 90–92).[2]

2. The two reservations were entirely separate until 1891 when, to comply with the Act of April 8, 1864, 13 Stat. 39 (App. B1–13), which limited the maximum number of reservations in the State to four, the President joined the two by a connecting strip and designated the whole as the Hoopa Valley Indian Reservation (see *Mattz, supra,* 412 U.S. at 492–494; see, also, map, 412 U.S. at 506). Nothing in the Act of 1864 required that the tribes within the reservation jointly occupy or govern all the land within the reservation, and there is no evidence that the President in the years immediately after the joinder of the two reservations attempted to disturb the separate lives and tribal identities of the two areas. Even many years later, the Yurok and Hoopa areas were considered too inaccessible to one another for mutual government (App. A 78–79). Moreover, the two groups were of different Indian families and did not share a common language (see App. A 13; see also Kroeber, *Handbook of the Indians of California,* 121–122, 128–130 (1925). Indeed, from the time the Reservation was expanded in 1891, a pattern of administrative and legislative action emerged recognizing in the residents of the Klamath River Reservation, the connecting strip, and the

[2] It is possible that there are a few long-term Indian residents of the Square excluded from the Hoopa roll. It is the position of the United States that such persons and their descendants are entitled to participate in the assets of the Square.

Square separate rights in their respective areas of the Reservation.

By the Act of June 17, 1892, 27 Stat. 52, only a year after the Reservations were joined, Congress granted allotments on the Klamath River portion of the Reservation to Indians who resided on that portion and provided for sale of the remaining land of that portion to non-Indian settlers. The proceeds of the sale were to be used exclusively "for the maintenance and education *of the Indians now residing on said lands and their children.*" 27 Stat. 52, 53 (emphasis added). Under this Act, 161 allotments were made to the resident Indians, averaging 60 acres. Of these Indians, only two were known to be Hoopas, and they had resided for many years on the Klamath River Reservation (App. A 56).

In 1898 the connecting strip was similarly allotted to the Indians living there. 499 allotments were made, averaging 40 acres, including both timber and agricultural lands. Of the Indians receiving allotments, again only two were known to be Hoopas, and they were long-time residents of the connecting strip (App. A 58).[3]

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[3] We are informed by the Bureau of Indian Affairs that of the approximately 30,000 acres allotted in these areas, some 11,609.75 acres were subsequently sold by supervised or negotiated sale (in which the Bureau of Indian Affairs acted for the individual Indian owners) for a total of $3,836,783.69. In addition to the acreage sold by supervised or negotiated sale, Bureau records also show that some 15,769.39 acres were "fee patented" to the Indian owners. While the Bureau records do not indicate what disposition was made of the lands after the fee patents were issued, the Bureau records and other records (see S. Rep. No. 278, 60th Cong., 1st Sess. 18 (1908)) indicate that this

It was not until 1922 and 1923 that allotments were made available to the residents of the Square. Then 365 allotments were made, averaging only eight acres each, because the timber lands were not allotted (App. A 60–61). These timber lands remained in tribal ownership and the revenues produced by them are the asset that the Yuroks seek to share.

3. The tribal government of the Hoopa portion of the Reservation is of long standing. While little is developed in the record of the historical Indian government, it is clear that in 1915 a council for the Square was called together to handle allotments on it (App. A 77). This council was composed exclusively of residents of the Square, including a Yurok Indian. Its restricted composition, as well as its recommendations to deny allotment rights on the Square to residents of the Addition, were specifically approved by the Indian Bureau (App. A 69–70). In the 1930's, when tribal governments throughout the country were reorganized, Commissioner of Indian Affairs Collier approved the Constitution and bylaws of the Hoopa Business Council as the government of the Square (App. A 82–83), retaining the divided status of the Reservation, even though the council sometimes dealt with affairs of the Addition as well (App. A 83–84).

The Constitution of the Hoopa Valley Tribe has

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land was heavily timbered and thus, presumably, also yielded substantial income to the Indian owners. Finally, the Bureau records show that the Yurok allottees derived miscellaneous income (such as permit, right-of-way and timber trespass fees) from their part of the Reservation in the amount of $583,529.74.

subsequently been amended from time to time to broaden its base effectively to include not only Hoopas but other Indian inhabitants of the Square and their descendants, including a few Yuroks (see App. A 89–92). An official roll of the Tribe has been compiled. The Secretary has used this roll for the distribution of income produced in the Hoopa Tribe's area of the Reservation (App. A 96–97, App. G; see note 2, *supra*).

There is no recognized tribal government for the Yurok Indians, and most of them, in contrast to the Hoopas, live totally outside the Reservation. Income produced in the connecting strip and the former Klamath River portion of the Reservation has been used for the benefit of the residents of those areas to the exclusion of the Hoopa Valley Tribe (App. A 95–96).

4. In the mid-1950's, commercial development of the unallotted timber on the Square began to generate substantial income, which was paid to the members of the Hoopa Valley Tribe. A number of Yurok Indians, who resided, and whose ancestors resided, outside the Square, sought to share in this money, but in 1958 the Secretary of the Interior ruled that the unallotted resources of the Square belonged exclusively to the members of the Hoopa Valley Tribe. 65 I.D. 59 (App. G).

A large group of Yurok Indians subsequently brought this suit in the Court of Claims. The Hoopa Tribe's motion to intervene was denied by the trial judge, but the Tribe was allowed to participate as

amicus curiae. On May 22, 1972, the trial judge ruled that the 1891 Executive Order created a single indivisible reservation giving the descendants of each Hoopa and each Yurok Indian identical rights in the entire reservation, and as a result held that 22 of 26 "sample" plaintiffs were entitled to judgments against the United States in amounts to be later determined. The Court of Claims adopted the trial judge's recommended decision *per curiam*. The court also granted the motion of the Hoopa Valley Tribe to intervene.

On January 14, 1974, the Hoopa Valley Tribe petitioned this Court for a writ of certiorari (No. 73–1104) to review the judgment of the Court of Claims.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Claims that the Yurok claimants are entitled to share in the proceeds of the sales of timber in the Square erroneously upsets established tribal rights and relations. It is apparently based upon the mistaken premise that where the President is authorized to settle more than one tribe on a reservation, particular areas cannot be reserved for each tribe. This holding is not supported by law.

The Act of April 8, 1864 (App. B), which authorized the President to set aside four reservations in California for the benefit of all California Indians, imposed no artificial limitation on the authority of the President to locate more than one tribe on a

reservation,[4] nor did it require the President to merge tribes or destroy tribal governments or jurisdiction.[5] Having so severely limited the number of reservations permissible, it would have been unreasonable for Congress to have so restricted the President, and it did not do so.

Nothing in the Executive Order of October 16, 1891 (App. E), extending the Hoopa Valley Reservation (The Square) so as to preserve the Klamath River Reservation, shows any intent on the part of the President to merge the two tribes or give either rights outside its traditional area. In view of the physical, historical, and cultural separation of the tribes and the reason for the merger (see *Mattz, supra,* 412 U.S. at 492–494), there is no basis for finding such an intent to be implied.[6]

Any doubt about the remaining separateness of the areas after the joining of the two Reservations was, in our view, eliminated by the Act of Congress of

[4] Under the 1864 Act the President established 22 separate reserves for various bands of Mission Indians (collectively regarded as one reservation for the purpose of the 1864 Act), in which each band obtained exclusive substantive rights to its own reserve (see various Executive Orders collected in 1 Kappler 819–824).

[5] Indeed, the Acts of May 17, 1882 (22 Stat. 68, 88) and July 4, 1884 (23 Stat. 76, 97), which are codified at 25 U.S.C. 63, expressly forbid the consolidation of tribes residing on Executive Order reservations without obtaining the consent of the tribes to be affected thereby.

[6] Indeed, in 1890, the Department of the Interior opposed a bill, which had passed the House of Representatives, which would have provided that the Yurok Indians of the Klamath River Reservation be removed to the Hoopa Valley Reservation and there receive allotments (App. A 45).

June 17, 1892 (App. C). That Act, after the joinder of the Reservations, treated the residents of the former Klamath River Reservation (the Yuroks) separately and provided valuable allotments for them to the exclusion of the residents of the rest of the expanded Reservation. This, and the subsequent exclusive allotment of the Connecting Strip (*infra*, p. 5: see Map, 412 U.S. at 506) fully justified the Secretary's determination that the assets of the Square, largely inhabited by Hoopas, should likewise be distributed among the inhabitants of that area. The presence of some conflicting statements as to the rights of the various groups where other matters were at stake, and at other times, does not nullify the correctness of the Secretary's decision, nor his authority to make it.

In rejecting the claims of the Hoopa Valley Tribe, the decision below emphasized that the Reservation was intended for such tribes as the President might put there and that no tribe had a vested interest in it (App. A 8–9). But, for the very same reason, no tribe's rights were abrogated by the reasonable action of the Secretary in reserving the assets of the separate areas of the Reservation for the separate tribes—especially in light of the fact that Congress had acted in the same way.

2. The decision of the Court of Claims unduly interferes with the authority of the political branches of the government to recognize tribal membership and tribal jurisdiction.

a. The recognition of Indian tribes is a matter for Congress or, in the absence of congressional action,

for executive officers. As this Court stated in *United States* v. *Holliday*, 3 Wall. 407, 419:

> The facts in the case * * * show distinctly "that the Secretary of the Interior and the Commissioner of Indian Affairs have decided that it is necessary, in order to carry into effect the provisions of said treaty, that the tribal organization should be preserved." In reference to all matters of this kind, it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs. * * *

In *Baker* v. *Carr*, 369 U.S. 186, 215, the Court reaffirmed *Holliday* and reiterated in some detail the principle that the recognition of Indian tribes is a matter left essentially to the Executive and Congress. The basis of this principle as to Indian tribes was described in Mr. Justice Frankfurter's dissenting opinion in *Baker* as follows (369 U.S. at 282):

> A controlling factor in such cases is that, decision respecting these kinds of complex matters of policy being traditionally committed not to courts but to the political agencies of government for determination by criteria of political expediency, there exists no standard ascertainable by settled judicial experience or process by reference to which a political decision affecting the question at issue between the parties can be judged. * * *

The wisdom of this principle in the context of Indian tribes is illustrated by the facts of the present case. It was a question of judgment for Congress and the Executive as to how allotments should be made

to the several tribes within the expanded Hoopa Valley Reservation. And it is similarly a question of judgment for the political branches to decide how tribal governments should be established (and, in a case such as this, over what part of a Reservation they should have jurisdiction), in order to form functioning political entities capable of real service to their peoples.

In making such judgments, Congress and the Secretary must consider governmental and cultural, as well as financial, realities. Normally an Indian tribe is a distinct political community with territorial boundaries. Each tribe is a " 'people distinct from others.' " *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, 169. As the Court noted in *McClanahan* (*id.* at 179), sovereignty of any kind is tied to control of territory. It is thus reasonable that when several tribes are to occupy a single reservation, some kind of division should be established. The borders may not be mathematically perfect in terms of nationality, but the necessity for practical solutions requires that the political branches have adequate discretion in solving such problems.

b. Here the decision of the Secretary was just. The Yuroks had received large and valuable allotments. It is only because the residents of the Square received allotments of approximately eight acres each rather than 40 or 60 acres, and kept the rest in tribal ownership, that the fund which is the subject of this lawsuit exists. It would be inequitable to take from the Hoopas their common property, which they sacrificed the pos-

sibility of large allotments to preserve, and grant an interest in it to others who received larger allotments from which the residents of the Square were precluded.

Furthermore, if, as the decision below requires, the Hoopa Valley Tribe must now share its tribal assets with the Yuroks, it would also have to share all decisions on the management of the tribally held property. Since in that respect the Hoopas would be hopelessly outnumbered,[7] under the decision below their carefully nurtured ancestral homeland would be turned over to the effective control of outsiders.

CONCLUSION

The fact that this case is crucially important to one Indian Tribe and a large part of the membership of another and concerns their relationship with the United States is reason for this Court to grant certiorari. As stated in *Choctaw Nation* v. *United States,* 318 U.S. 423, 424, certiorari is appropriate if a case raises "important questions concerning the relations between the two tribes and the United States." Moreover, the decision below unduly limits the authority of the Secretary of the Interior to make needed decisions in the area of Indian affairs, and, in our view, reaches an unjust result.

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[7] There are 1,360 names on the Hoopa Valley tribal roll, compared with 3,323 plaintiff Yuroks.

For the foregoing reasons, the petition of the United States for a writ of certiorari should be granted.

Respectfully submitted.

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UNITED STATES OF AMERICA, *Petitioner,*

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JESSIE SHORT, et al., *Respondents.*

BRIEF OF RESPONDENTS JESSIE SHORT ET AL. IN OPPOSITION TO PETITION OF THE UNITED STATES OF AMERICA FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Respondents Jessie Short, et al., the Plaintiffs in the United States Court of Claims, present this brief in opposition to the Petition of the United States of America for a Writ of Certiorari to the United States Court of Claims.

QUESTIONS PRESENTED

The statement in the petition of the United States of the questions presented by the decision of the Court

of Claims is misleading in that it assumes facts that are contrary to the findings of the Court of Claims or that have neither been found by that Court nor established by any evidence in the record.

The petition of the United States states as the first question:

> "Whether, in light of the discretion given the President by Congress to settle Indians on reservations in California, and in light of specific actions by Congress treating separately different parts of the Hoopa Valley Reservation, the Court of Claims erred in setting aside the determination by the Secretary of the Interior that the Hoopa Valley Tribe has tribal jurisdiction over the portion of the Reservation that is its ancestral home and historic reservation and which continues to be the place where most of the enrolled members of the tribe reside."

The findings of the Court of Claims show that the "Hoopa Valley Tribe" is an organization of Indians of arbitrary composition that did not come into existence until 1950. (Fdgs. 136-156, App. 85).[1] Thus it is misleading to speak of "the Hoopa Valley Tribe," as distinguished from the ethnic group "the Hoopa Tribe," as having an "ancestral home." Moreover, the Court of Claims found that only the southern half of the twelve-mile-square portion of the reservation over which the Hoopa Valley Tribe unlawfully was granted exclusive jurisdiction constituted ancestral territory of

[1] "App." refers to the separately bound appendix filed with the petition for a writ of certiorari (No. 73-1104) filed by the Hoopa Valley Tribe, intervenor below.

the Hoopa tribe. The northern half, the Court found to be ancestral territory of the Yurok Tribe. (Fdgs. 5, 21, 23; App. 15, 25-27).

Nor was this twelve-mile-square portion ever an "historic reservation" exclusively for the Hoopa Tribe. The Court of Claims found that at the time this area was designated as an Indian Reservation it was occupied by Indians of the Hoopa, Redwood, and Yurok Tribes. (Fdgs. 22 and 179; App. 27 and 100). The Court of Claims further found that the evidence was abundant that the Hoopa Valley Reservation was intended from the outset (that is when only the twelve-mile-square portion had been designated as an Indian Reservation) for the accommodation of numbers of tribes of Northern California including the Klamaths (Yuroks). (Fdg. 180; App. 100).

The Court of Claims made no finding that the twelve-mile-square portion of the Hoopa Valley Indian Reservation is the place "where most of the enrolled members" of the Hoopa Valley Tribe reside. Nor is there any evidence in the record showing this to be true. The only finding on the subject is that when the membership roll of the Hoopa Valley Tribe was submitted to the Commissioner of Indian Affairs for approval in 1950, "many" of the members were *not* residents of the Reservation. (Fdg. 148, App. 88).

The petition of the United States states as the second question:

> "Whether the Secretary of the Interior acted properly in paying the proceeds of annual sales of timber on the original Hoopa Valley Tribe por-

> tion of the Hoopa Valley Reservation to members of the Hoopa Valley Tribe, to the exclusion of the respondents, members of the Yurok Tribe."

This statement is misleading in two respects. First, the findings of the Court of Claims previously noted show that the original twelve-mile-square portion of the reservation was not "the original Hoopa Valley Tribe portion." Second, the respondents are not exclusively members of the Yurok Tribe, but represent all of the Indians entitled to share in the benefits of the Hoopa Valley Reservation, but who do not meet the arbitrary membership requirements of the organization of Indians known as the Hoopa Valley Tribe. Some of the respondents are of mixed Yurok and Hoopa blood, others are of Karok blood, and some are only of Hoopa blood. (See e.g., Fdgs. 191, 192, 196, 199, 206, 210, 212; App. 107-111).

There is only one single underlying question presented by the decision of the Court of Claims and that is whether or not the Hoopa Valley Indian Reservation in California, created and enlarged by Executive Orders validly issued in furtherance of and pursuant to the Act of Congress of April 8, 1864, 13 Stat. 39, providing for the establishment of not more than four reservations to accommodate all of the Indians of California, constitutes a single reservation held in trust by the United States for the equal benefit of all California Indians accommodated thereon.

A subsidiary question, which, however, finds its answer in the answer to the underlying question, is

whether the Secretary of the Interior acted properly in paying the proceeds of annual sales of timber on the original twelve-mile-square portion of the Reservation to members of the organization of Indians known as the Hoopa Valley Tribe to the exclusion of other Indians who had been accommodated on the Reservation, and who had been recognized as having equal rights there.

STATUTES INVOLVED

In addition to the statutes cited by petitioner, Section 4 of the Act of March 3, 1927 is also involved. This statute provides as follows:

> "Sec. 4. That hereafter changes in the boundaries of reservations created by Executive order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided,* That this shall not apply to temporary withdrawals by the Secretary of the Interior." (44 Stat. 1347; 25 U.S.C. 398d.)

STATEMENT OF THE CASE

Inasmuch as petitioner's statement of the case is in many respects inaccurate and omits facts found by the Court of Claims inconsistent with the picture of the case which petitioner seeks to portray, respondents find it necessary to present the following statement.

This case arose by reason of the unique method adopted by the Congress to provide permanent reser-

vations adequate to accommodate all of the Indians of California, and subsequent arbitrary administrative action thwarting the Congressional purpose.

Originally the Congress had sought to provide permanent reservations for the Indians of California, in a manner frequently employed elsewhere in the United States, by appointing Commissioners to negotiate for treaty reservations for particular tribes. Eighteen such treaties were negotiated with the California Indians and significantly one of them provided for a joint reservation for the Hoopa, Yurok, and Karok Tribes which would have encompassed much of the same area as ultimately became the Hoopa Valley Reservation. (Fdg. 18(e), App. 25). However, the Senate failed to ratify any of these treaties. See, *Indians of California v. United States,* 98 Ct. Cl. 583 (1942).

When the efforts to provide treaty reservations proved abortive, the Congress sought to deal temporarily with the California Indians by providing for the establishment of military reservations for the confinement of as many of them as possible. One of such military reservations established in 1855 was the Klamath River Reservation which consisted of a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River for a distance of approximately 20 miles. (Fdg. 1, App. 14).

Contrary to the assertion of petitioner, the Klamath River Reservation was not established "for the Yurok Indians." This is so even though as this Court observed in *Mattz v. Arnett,* 412 U.S. 481 at 487, this

area was ideally selected for the Yuroks since they had lived in this area and there was limited arable land and an abundance of fish in the river. For, as this Court also noted in *Mattz,* the statutes pursuant to which this reservation was established merely provided for the selection of reservations for collecting and subsisting "the Indians of California." 412 U.S. at 487. Members of various tribes, in addition to members of the Yurok tribe, were placed on this Reservation. (Fdg. 7, App. 15).

In 1864, the Congress acted to provide permanent reservations for the Indians of California by enacting the Act of April 8, 1864, 13 Stat. 39, which authorized the President to establish not more than four reservations, as remote from white settlements as possible, adequate to accommodate all of the Indians of the State. (A. 113).

In August of that year Austin Wiley, the Superintendent of Indian Affairs for California, reported to the Commissioner of Indian Affairs that he had posted a public notice of the establishment, pursuant to the Act of April 8, 1864, of a reservation in Klamath County, California of such metes and bounds as might ultimately be approved by the President. He further advised the Commissioner that he was proposing for such reservation the whole of the Hoopa Valley and to the summit of the mountains on each side about five miles. (Fdgs. 13 and 15, App. 18-19).

On February 18, 1865, Superintendent Wiley issued a public notice defining the boundaries of the Hoopa Valley Reservation as follows "Beginning at a point

where Trinity river flows into Hoopa valley and following down said stream, extending six miles on each side thereof, to its junction with Klamath river." The reservation as thus described consisted of a tract of land twelve miles square bisected by the lower twelve miles of the Trinity River. Since the Hoopa Valley proper is approximately six miles in length and after leaving the valley the Trinity Rivers flows another six miles through a precipitous canyon to its junction with the Klamath River, the reservation as ultimately proposed by Superintendent Wiley and as eventually formally defined by Executive Order in 1876, was twice as large as originally proposed by Wiley in his report to the Commissioner of Indian Affairs in August, 1864. (Fdg. 21; App. 25-27). This tract encompassed nearly 90,000 acres. (Fdg. 34; App. 30-31).

This entire area was not as stated by petitioner the "historic home of the Hoopas." The native villages of the Hoopas were along the Trinity River in the Hoopa Valley proper and continuing upstream (south) beyond and south of this twelve-mile-square tract. The north half of the twelve-mile-square tract, to the extent that it was inhabited was the home of members of the Yurok tribe who lived in the precipitous canyon of the Trinity north of the Hoopa Valley proper and in the northwest part of the tract. Thus the north half of the original twelve-mile-square portion of the Hoopa Valley Reservation was native territory of the Yuroks, not the Hoopas. (Fdgs. 5, 21, 22, 179; App. 15, 25-27, 100). Consequently, at the time the original

twelve-mile-square portion of the Hoopa Valley Reservation was first defined by Superintendent Wiley in 1865 it was occupied by members of both the Hoopa and Yurok tribes. Its inhabitants also included a number of Indians of the Redwood tribe who had recently been induced to move into the Hoopa Valley proper. (Fdg. 22; App. 27).

Since the Act of April 8, 1864 provided for no more than four reservations to accommodate all of the Indians of California and since there were a multitude of tribes in the State, it was necessarily contemplated from the outset that the Hoopa Valley Reservation would be a multi-tribal reservation for the benefit of all of the Indians who were eventually accommodated thereon. (Fdg. 180; App. 100). The very year that Superintendent Wiley defined the boundaries of the original twelve-mile-square portion of the Reservation, it was contemplated that some 1800 Yurok Indians then living along the Klamath River would move to the Reservation. (Fdg. 25; App. 27). In 1869, the government moved more than 300 Indians of the Saiaz or Nogatl, the Wiyot, Wylackie and Sinkyone tribes onto the Reservation (Fdg. 28(a); App. 28).

Despite the vast acreage of the Hoopa Valley Reservation as originally established, most of it was not suitable for habitation. Thus in 1891, in order to accommodate on this reservation the numerous Yurok Indians living nearby, President Harrison by Executive Order enlarged the reservation to include a strip one mile on each side of the Klamath River from the

then northern boundary of the reservation at the junction of the Klamath and the Trinity to the Pacific Ocean. (Fdg. 33; App. 30). The lower twenty miles of this narrow strip constituted the old Klamath River military reservation which had never been formally abandoned. The intervening strip of land along the Klamath River added to the Hoopa Valley Reservation, often referred to as the Connecting Strip, had never theretofore constituted reservation land. (Fdg. 34; App. 30-31).

The following year by the Act of June 17, 1892, 27 Stat. 82, the portion of this addition to the Hoopa Valley Reservation which had constituted the old Klamath River Reservation was opened for public settlement, subject to the prior allotment, pursuant to the General Allotment Act, of homesites to the Indians inhabiting that area and the reservation of village sites. (Fdg. 77; App. 51-52; Act of June 17, 1892; App. 115). The Act of June 17, 1892 also provided that the proceeds from the sale of land in this area to non-Indian settlers should be placed in a fund for the maintenance and education of the Indians residing in this area and their children.

This Court has recently ruled in *Mattz v. Arnett,* 412 U.S. 481 (June 11, 1973), that the Act of June 17, 1892 did not have the effect of terminating the status of this area as part of the Hoopa Valley Indian Reservation. The Court of Claims, after an exhaustive consideration of the legislative history and background of this Act, also found, contrary to the contention of petitioner, that this statute was not intended to limit

the Indians of this portion of the Hoopa Valley Reservation to rights in this area and deprive them of the benefit of the communal lands in the remainder of the Reservation. (Fdgs. 49-77 and 184; App. 35-52 and 101-102).

A program for allotment of homesites to individual Indians pursuant to the General Allotment Act of 1887, 24 Stat. 388, had already been instituted on the original portion of the Reservation prior to its enlargement by the Executive Order of 1891. During the year in which the General Allotment Act was enacted, executive authority had been given for surveys preliminary to allotments and in 1889 while the surveys were still underway temporary allotments were made pending completion of the surveys (Fdg. 78(b); App. 52-53). After the enlargement of the Reservation and the closely following passage of the Act of June 17, 1892, which specifically authorized allotments pursuant to the General Allotment Act in the area of the Hoopa Valley Reservation which had been the old Klamath River Reservation, an allotment program in this area was promptly instituted as well as in the remainder of the addition to the Reservation referred to as the Connecting Stip. (Fdgs. 78(b), 78(c), 79-85; App. 52-58). By 1894 when the making of allotments in the addition to the Hoopa Valley Reservation had been completed, the allotments surveys commenced in the original portion of the reservation in 1887 had been finished, and Presidential authority was given for the formalizing of allotments in this part of the Reservation. Specific instructions were given that this

should be done in a manner which would permit the retention of any improvements on the temporary allotments which had been made pending completion of the surveys. (Fdgs. 86 and 87; App. 58-59). However, it developed that the original surveys were inadequate, and as a result the formalizing of the allotments in this area of the Reservation was delayed until 1922 and 1923. (Fdgs. 88 and 90; App. 59 and 61).

Petitioner asserts that this allotment program constituted a pattern of administrative and legislative action recognizing in the residents of the area of the old Klamath River Reservation, the Connecting Strip and the original twelve-mile-square portion of the Hoopa Valley Reservation separate rights in each area. This assertion is directly contrary to the finding of the Court of Claims on the basis of a most careful analysis of the allotment program, that it shows "no trace" of any such understanding or intention. (Fdg. 186; App. 104).

The findings of the Court of Claims show without question that from the time of the enlargement of the Hoopa Valley Reservation in 1891 until the early 1950's the entire Reservation was administered as a single integrated reservation; all of its Indian inhabitants had unrestricted access to and use of all portions of the reservation and were recognized as having equal rights thereon. In every instance in which the question was raised, it was ruled that the Indians of the addition had equal rights in the original portion of the Reservation. (Fdgs. 35-36, 101-131, 167; App. 31, 67-84, 95).

Inasmuch as petitioner makes the misleading statement that "tribal government of the Hoopa portion of the Reservation is of long standing", it is appropriate to note the findings of the Court of Claims regarding Indian participation in the government of the Hoopa Valley Reservation.

It is important to recognize at the outset that historically the Hoopa, Yurok, and other tribes who occupied or settled upon the Hoopa Valley Reservation, were not politically organized, had no tribal government and for many years after the Hoopa Valley Reservation was established did not participate in its administration. (Fdg. 109; App. 76-77). In 1915-1916 an ad hoc council was assembled by the Superintendent to consider application for enrollment on the Reservation. The Commissioner of Indian Affairs directed that this council be representative of all of the tribes having rights on the Reservation. The Yurok member of this council, although then living in the Hoopa Valley proper, held an allotment of land on the addition. (Fdgs. 110 and 128; App. 77 and 83). There is no evidence of further Indian participation in the administration of the Hoopa Valley Reservation until 1933. From 1933 until 1950, there functioned on the Reservation a governmental body known as the Hoopa Business Council. The members of this council were all Indians drawn from the Hoopa Valley proper and the immediately adjacent Bald Hills area since difficult travel conditions made it impracticable for Indians residing in other areas of the Reservation to attend regularly. However the Hoopa, Yurok and Karok tribes all were

represented in the council membership and the council acted in respect to matters arising on and affecting all portions of the Reservation. The Indian judge appointed by this council was a Yurok who adjudicated matters arising on all portions of the Reservation. (Fdgs. 126-131; App. 82-84).

The organization of the Hoopa Valley Tribe in 1950 to embrace only a portion of the Indians of the Hoopa Valley Reservation (Fdgs. 136-156; App. 85-92) and the subsequent distribution of the revenues from the original portion of the Reservation exclusively to the select membership of this organization (Fdgs. 166-174; App. 95-98), constituted a complete departure from the situation that had prevailed for more than half a century since the Reservation's enlargement and an abrogation of the rights of the majority of the Indians who had been recognized as entitled to share equally in the resources of the entire Reservation.[2]

The decision of the Court of Claims does no more than restore these rights which are grounded in the Act of April 8, 1864 and the implementing executive orders creating the Hoopa Valley Reservation and which were consistently recognized by administrative

[2]Petitioner asserts without any supporting reference that most of the Yuroks (apparently meaning Respondents) in contrast to the Hoopas (apparently meaning the members of the organization known as the Hoopa Valley Tribe) live totally outside the Reservation. The Court of Claims made no finding to this effect and there is no evidence that this is so. To the contrary, the only finding on the subject is that when the membership roll of the Hoopa Valley Tribe was submitted to the Commissioner of Indian Affairs for approval in 1950 "many" of the members were *not* residents of the Reservation (Fdg. 148, App. 88).

action until the coup executed by the members of the organization self-denominated as the Hoopa Valley Tribe.

ARGUMENT WHY WRIT OF CERTIORARI SHOULD NOT BE GRANTED

This case presents none of the reasons for granting the writ of certiorari of the character set forth as guides in Rule 19 of this Court.

The Court of Claims has not rendered a decision in conflict with the decision of any other federal court.

The Court of Claims has not decided an important question of federal law which has not been, but should be, settled by this Court, nor decided a federal question in a way in conflict with the applicable decisions of this Court. To the contrary, the Court of Claims has resolved this case by applying to the facts which it has found to be true, the principles of federal law enunciated tby this Court in its decision in *Donnelly v. United States*, 228 U.S. 243 in 1913 and in the decision last year in *Mattz v. Arnett*, 412 U.S. 481, in which the decision and findings of the trial judge of the Court of Claims in the present case were extensively referred to.

Clearly the Court of Claims has not in any way departed from the accepted and usual course of judicial proceedings.

This case was considered by the Court of Claims after a trial in which there was introduced volum-

inous documentary evidence assembled through a number of years of discovery and in which numerous witnesses were examined and subjected to full cross-examination.[3] The trial judge permitted the organization known as the Hoopa Valley Tribe to participate fully in the trial and post-trial briefing as amicus even though it had resisted participation until shortly before the trial.

Following the extensive post-trial briefing, the trial judge spent nearly two years in meticulously analyzing the evidence and the arguments and in preparing extensive and carefully worded findings. After another round of extensive briefing following the filing by petitioner and the Hoopa Valley Tribe, as amicus, of objections to the trial judge's recommended decision and findings, and after oral argument, the seven judges of the Court of Claims unanimously adopted the decision and findings of the trial judge without change.

Petitioner submits two reasons for granting the writ, the second of which has two facets. Both reasons are predicated upon assumptions of fact contrary to the findings of the Court of Claims and are lacking in substance.

As its first reason, petitioner contends that the decision of the Court of Claims "erroneously upsets established tribal rights and relations" upon "the mistaken premise that where the President is authorized

[3]Although petitioner and the Hoopa Valley Tribe had scheduled a number of government officials and members of the Hoopa Valley Tribe as witnesses in a pre-trial statement filed with the Court, none of them were called.

to settle more than one tribe on a reservation, particular areas cannot be reserved for each tribe."

It is manifest that the decision of the Court of Claims does not upset, but rather restores, rights and relations which were established and recognized for more than half a century before they were abrogated by the arbitrary action of the Secretary of the Interior in distributing the revenues from the original portion of the reservation exclusively to the members of the Hoopa Valley Tribe organized in 1950.

The question of the power of the President under the Act of April 8, 1864 to have reserved particular portions of the reservation for particular tribes is in no way involved in the decision of the Court of Claims. For the Court found that the President had no intention that particular portions of the reservation should be for the exclusive benefit of particular tribes.

Members of the Yurok and Hoopa tribes shared the original twelve-mile-square portion of the Reservation from the time that it was first designated as an Indian Reservation. The north half to the extent it was used and inhabited was native territory of the Yuroks, not the Hoopas. A number of Redwood Indians had been induced to move into the Hoopa Valley when the boundaries of the Reservation were first defined. (Fdg. 22; App. 27). A few years later more than 300 Indians of the Saiaz, Wiyot, Wylackie and Sinkyone tribes were moved into the Hoopa Valley proper. (Fdg. 28(a); App. 28). Thus prior to the Reservation's enlargement the original twelve-mile-

square portion had clearly not been reserved for the exclusive benefit of the Hoopa tribe.

The Court of Claims found that the plain and natural effect of the Executive Order of 1891 (App. 119) enlarging the Hoopa Valley Reservation was to create an enlarged Reservation in which the Indians of the original reservation and the Indians of the added tract would have equal rights in common. (Fdg. 183; App. 101). The Court further found that an exhaustive study of the background of both the Executive Order of 1891 and the Act of June 17, 1892 (App. 115) showed no sign of executive or Congressional intent that the Reservation should be divided into three separate areas insofar as substantive rights were concerned. (Fdg. 184; App. 101-102).

The fantastic theory that the Hoopa Valley Reservation constituted a tripartite reservation united for administrative purposes only and comprised of three separate segments insofar as substantive rights were concerned was never advanced by anyone until it appeared in the pre-trial statement of the contentions of fact and law made by petitioner and the amicus, Hoopa Valley Tribe.

Petitioner also asserts that no rights could have been abrogated by the action of the Secretary of the Interior in distributing revenues from the original twelve-mile-square portion of the Reservation exclusively to members of the Hoopa Valley Tribe because the Court of Claims has found that no Indians acquired vested rights in the Reservation. Here again, petitioner misstates the actual finding of the Court.

The Court did not find that Indians accommodated on the Hoopa Valley Reservation did not acquire vested rights of any sort. The Court found only that the right of Indians accommodated on the reservation to share in its benefits remained subject to the President's continuing authority under the Act of April 8, 1864 to accommodate additional Indians thereon in order to effect the Congressional purpose to accommodate all of the Indians of California on not more than four reservations. (Fdgs. 175 and 181; App. 99-100). The action of the Secretary of the Interior in distributing the revenues from the original twelve-mile-square portion of the Reservation exclusively to the members of the Hoopa Valley Tribe obviously did not constitute Presidential action taken pursuant to the Act of April 8, 1864 to further the Congressional purpose of accommodating all of the Indians of California on not more than four reservations. Moreover, such action by the Secretary, which in effect changed the boundaries of the Hoopa Valley Reservation by dividing it into separate reservations was specifically prohibited by Section 4 of the Act of March 3, 1927, 44 Stat. 1347, 25 U.S.C. 398d, which prohibits any changes in the boundaries of Indian reservations except by Act of Congress. *Cf. Healing v. Jones,* 210 F. Supp. 125 at 181 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963).

As its second reason why the writ should be granted, petitioner asserts that the decision of the Court of Claims unduly intereferes with the authority of the political branches of the government to recog-

nize tribal membership and tribal jurisdiction. This is an ironic contention, because in making it petitioner recognizes that the ultimate authority in dealing with Indian tribes is the Congress. The sole effect of the decision of the Court of Claims in the present case is to strike down arbitrary interference with the method for providing reservation accommodations for the Indians of California prescribed by the Congress in the Act of April 8, 1864. The Court has exercised the very necessary and proper judicial function of determining what Indians are entitled to share equally in the benefits of the Hoopa Valley Reservation pursuant to the Congressional mandate in the Act of April 8, 1864 and the implementing Executive Orders of 1876 and 1891. *Cf. Halbert v. United States,* 283 U.S. 753 (1931); *The Quinaielt Tribe v. United States,* 102 Ct. Cl. 822 (1945) and *Healing v. Jones,* 210 F. Supp. 125 (D. Ariz. 1962), aff'd 373 U.S. 758 (1963).

Petitioner also makes the spurious argument that the Court of Claims should not have struck down the action of the Secretary of the Interior in distributing the revenues from the original twelve-mile-square portion of the Reservation exclusively to the members of the Hoopa Valley Tribe, because such action by the Secretary was "just." The alleged justness of this action is grounded in the claim that it preserved for the Indians who received small individual allotments of land in this portion of the Reservation the benefit of common land that would not exist had they received as large allotments as some Indians on other

portions of the Reservation. There are glaring fallacies in this claim.

All of the individual allotments on the Hoopa Valley Reservation were made pursuant to the General Allotment Act of 1887, 24 Stat. 388. The purpose of the General Allotment Act was to provide each Indian with an individual parcel of land on which he could maintain a settled home and hopefully sustain himself and his family by agricultural and pastoral pursuits. *United States v. Rickert,* 188 U.S. 432 (1903) at pages 437 and 442. Certainly the General Allotment Act did not contemplate that the right of an Indian allotted under the Act to thereafter share the benefits of the common land of the Reservation would depend on the relative value of his allotment in respect to other allotments on the reservation.

Moreover, although the Indians given allotments on the addition to the Hoopa Valley Reservation were given allotments of a larger average size than the allotments in the original portion of the Reservation, this was so for the simple reason that there was little arable land on the addition and larger allotments were necessary in order to provide the allottee with sufficient land on which he might possibly sustain himself by grazing livestock. It was recognized that much of the land available for allotment on the addition was of no value to the Indian. (Fdg. 84; App. 57). On the other hand, the allotments on the original portion of the Reservation were made in the fertile Hoopa Valley and the adjacent open grassland area of the Bald Hills. (Fdg. 90; App. 61). These allotments at

the time they were made were far more valuable to the allottees than those on the addition.

Furthermore, it simply is not true that if the Indians allotted on the original portion of the Reservation had been given allotments of as large an average size as those on the addition, there would be no common land left on the original portion of the Reservation. The allotments on the Hoopa Valley Reservation of the largest average size were those made in the area which had been the old Klamath River Reservation, where they averaged approximately 60 acres. (Fdg. 83; App. 56). If all of the 365 persons allotted on the original portion of the reservation had been given allotments of 60 acres, only 21,900 of the 89,572 acres in this portion of the Reservation would have been utilized. (Fdgs. 34 and 90; App. 30-31 and 61).

Also, the criterion for membership in the Hoopa Valley Tribe is not the size or value of the allotment received by a member. Thus many Indians entitled to equal rights in the common lands of the Hoopa Valley Reservation and who received no allotment at all have been deprived of their rights by the so-called "just" action of the Secretary of the Interior in distributing the revenues of the original portion of the Reservation exclusively to the arbitrarily selected members of the Hoopa Valley Tribe.

Presumably as a reason why the decision of the Court of Claims is wrong, petitioner makes one last assertion to the effect that since the members of the Hoopa Valley Tribe constitute a minority of the In-

dians entitled to equal rights on the Reservation under the Court's decision, they may lose the controlling voice in the administration of the common lands of the Reservation. This assertion merely serves to point up the justness of the decision of the Court of Claims, and the complete injustice, recognized by the Court, in the action of the Secretary of the Interior in giving the benefit of most of the common land of the Hoopa Valley Reservation exclusively to a select minority, thereby depriving the majority of the Indians of the Reservation of their right to share equally in the benefits of such lands.

CONCLUSION

For all of the reasons stated, the petition of the United States of America for a writ of certiorari to review the judgment of the United States Court of Claims in Short et al. v. the United States, No. 102-63 (October 17, 1973) should be denied.

Respectfully submitted,

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March, 1974

No. 73-1244

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, PETITIONER

v.

JESSIE SHORT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

In our petition we argue that the decision of the Secretary to distribute the revenues from the portion of the Hoopa Valley Reservation known as the "Square" (see map following 412 U.S. 506) to the Indian inhabitants of that area and their descendants, represented by the Hoopa Valley Tribe, was correct, and that the decision of the Court of Claims, requiring such distributions to be shared with the residents of the Klamath River portion of the Reservation and the Connecting Strip and their descendants, is both unjust to the Hoopa Valley Tribe and an unwarranted interference with the Secretary's authority in the area of Indian affairs. We pointed out that the land in the other two areas of the Reservation had been distributed to the residents of those areas to the exclusion of the Hoopas, and that the fund in question was created largely because the Hoopas had received only small homestead allotments, and had received no allotments of timber lands, as had the Indians of the other parts of the Reservation.

Respondents' brief, in reply, gives the impression that the Court of Claims has made findings of fact contrary to these contentions. Respondents state (or suggest) that the court found as facts: (1) that half the Square was originally Yurok land, (2) that the Hoopa Valley Tribe is an arbitrary group created in 1950, and (3) that under the 1891 Executive Order and the Act of June 17, 1892, the President and Congress intended that all residents of the extended Reservation have equal rights in the whole (Br. 2-3, 18). The first two propositions, in our view, misinterpret the findings of the Court of Claims and the third is an incorrect conclusion of law.

1. Respondents assert that the Court of Claims found the northern half of the Square to be "ancestral territory of the Yurok Tribe," citing findings 5, 21, 23; App. A 15, 25-27 (Br. 3).

Those findings show that there were Yurok villages along the Klamath River to a point near its conjunction with the Trinity River, and that the northern portion of the Square, as finally located, included some of those villages. There is no finding that the Yuroks exercised any control beyond their riverside villages. More revealing is finding 30, App. A 29, which shows that in 1875, at about the time the boundaries of the Square were established, there were 571 Hoopas, 102 Redwoods and Saiaz[1] and 43 Klamaths (Yuroks and Karoks) living in the Square. Thus when the Hoopa Valley Reservation was created it was, as its name suggests, predominantly Hoopa.

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[1]The Redwood and Saiaz, as well as several other bands, later became part of the Hoopa Valley Tribe. See App. pp. 90-91.

Our petition recognizes that the Hoopa Valley Tribe is not racially pure, and indeed points out that the Hoopa Tribe has expanded to include most of the people of the Square.[2] Moreover, to the extent that there are long term residents of the Square and their descendants who are not enrolled members of the Hoopa Tribe, we admit they are entitled to participate in the assets of the Square (Pet. 3-4 and n. 2).

2. Respondents state that the findings of the Court of Claims show that the "Hoopa Valley Tribe" is an organization of Indians of arbitrary composition that did not come into existence until 1950 (citing findings 136-156, App. A. 85-92). But the findings show that the historic Hoopa Tribe was the dominant tribe of the Square (finding 30, App. A. 29); that the early censuses of the Square were made each year as a "Census of the Indians of the Hoopa Tribe" (finding 38, App. A 31); that in 1915 and 1916 a tribal council known as the

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[2]The statement in our petition that most of the Yuroks, in contrast to the Hoopas, live outside the Reservation altogether, which respondents do not dispute but point out (Br. 3) is not based on the evidence in the record, is based on information supplied us by the Bureau of Indian Affairs. Though the information is not necessary to a determination of the case, it is instructive that the Bureau's records and inquiries indicate that 850 to 900 of the approximately 1370 enrolled members of the Hoopa Valley Tribe live on the Reservation. By contrast, of the 3323 plaintiffs the Bureau's information shows that some 200 live on the original Hoopa Reservation and some 275 live on the Hoopa extension, the Bureau has no records of 383, and the remainder live outside the Reservation.

Hoopa Council, composed exclusively of people of the Square, was convoked and ruled on eligibility for allotments on the Square (App. A 70, 77); that in 1933 the Indians of the Square petitioned the BIA to be allowed to organize a "Tribal Council" (finding 113, App. A 78) which was approved as the Hoopa Business Council and which became the tribal council of the present Hoopa Valley Tribe (see discussion at Pet. 6-7). It is accordingly inaccurate to characterize the present Hoopa government, which is the successor to the ancient tribal government and the intermediate modern councils, as being either arbitrary or first created in 1950.[3]

3. Respondents rely (Br. 18) on first the Court of Claims' "finding" that the "plain and natural effect of the [executive order of 1891 extending the reservation] was to create an enlarged Reservation in which Indians of the original reservation and the Indians of the added tracts would have equal rights in common" (finding 183, App. A 101). But this "finding" is of course a conclusion of law, not a finding of fact, and, as we showed in our petition (Pet. 4-6), it is an incorrect conclusion. In any event, it is a conclusion as to the purpose of an 1891 Executive Order. The next year, by the Act of June 17, 1892, 27 Stat. 52, Congress required that allotments on the Klamath River portion of the Reservation be given exclusively to the Indian inhabitants of that portion and

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[3]A history of traditional governments first being ignored by the federal government and then reorganized and recognized is typical of Indian tribes throughout the country. Indian self-government was actively discouraged by the federal government from the time of the allotment Acts (culminating in the 1870's) until the early 1930's when John Collier became Commissioner of Indian Affairs and Congress enacted the Indian Reorganization Act. See U.S. Department of the Interior, *Federal Indian law*, 114-117; 127-133.

that they receive the revenues produced by sales of excess lands, to the exclusion of the residents of the Connecting Strip and the Square.[4] The Secretary thereafter allotted the Connecting Strip and distributed its revenues in a similarly exclusive fashion (App. A 58, see Pet. 5-6). These acts, also found as fact by the Court of Claims, were the most important administrative acts concerning the Reservation after its enlargement. They constitute, together with the deliberately small allotments made on the Square (App. A 60-61), a solid basis for the Secretary's subsequent decision to continue to treat the portions separately so far as the revenues from land are concerned.

In sum, it is not necessary to contradict the findings of fact of the Court of Claims to correct its ultimate conclusion of law--a conclusion that results, in our view, in an unwarranted dilution of the assets of an Indian tribe under the protection of the United States.

For the foregoing reasons, as well the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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Solicitor General.

WALLACE H. JOHNSON,
Assistant Attorney General.

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Assistant to the Solicitor General.

April 1974.

[4]There is no reason to search for a hidden intent in this Act (compare Resp. Br. 18; finding 184, App. A 101-102) since, by its terms, it treats one part of the Reservation separately with respect to rights in the land.